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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/087,204

03/01/2002

Avery Li-Chun Wang

Landmark Digital Serv.-P0

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10/17/2006

DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P.

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DALLAS, TX 75201-2784

EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,204

Applicant(s)

WANG ET AL.

Examiner

Etienne P LeRoux

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*Claim Status:*

Claims 19-51 are pending, claims 1-18 have been cancelled. Claims 19-51 are rejected as detailed below.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-28, 31-43 and 46-51 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat No 6,128,625 issued to Yankowski (hereafter Yankowski)

Claims 19, 27, 31-36, 42, 46, 50 and 51:

Yankowski discloses:

extracting a plurality of characteristics from a media sample [Fig 1 col 5, lines 45-65]

transferring said plurality of characteristics to a server coupled with a database [external database, col 2, lines 30-40, col 2, lines 55-65]

deriving fingerprints/landmark pairs; [fingerprints and Point value, col 6, lines 1-25]

storing said fingerprint/landmark pairs from said characteristics in said database [remote database 50, Fig 2]

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Claims 20, 21, 47 and 48:

Yankowski discloses simultaneously transferring metadata to identify said media sample when transferring said plurality of characteristics [col 6, lines 1-25]

Claims 22 and 37:

Yankowski discloses processing is executed by an updateable or replaceable algorithm [Fig 8]

Claims 23 and 38:

Yankowski discloses prior to extracting said characteristics, determining whether or not said database already contains landmark/fingerprint pairs associated with said media sample [abstract].

Claims 24 and 39:

Yankowski discloses where said media comprises a compact disk or digital video disk [abstract]

Claims 25 and 40:

Yankowski discloses where said media comprises a streaming video [abstract]

Claims 26 and 41:

Yankowski discloses where said media comprises a file stored on a user's computer [Fig 1]

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Claim 27:

Yankowski discloses compiling a list of distinctive and reproducible points in time at which fingerprints should be calculated and calculating one or more fingerprints at one or more said distinctive and reproducible points in time [col 6, lines 1-15]

Claims 28 and 43:

Yankowski discloses a frequency value of the strongest spectral peak in proximity to a landmark [col 6, lines 25-45]

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 35 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yankowski in view of Applicant's Admitted Prior Art (hereafter AAPA) and further in view of US Pat No 5,829,004 issued to Au (hereafter Au).

Claims 19, 35 and 50:

Yankowski discloses extracting a plurality of characteristics from a media sample [Fig 1col 5, lines 45-65]

transferring said plurality of characteristics to a server coupled with a database [external database, col 2, lines 30-40, col 2, lines 55-65]

storing said fingerprint/landmark pairs in said database [remote database 50, Fig 2]

Yankowski discloses the elements of claim 19 as noted above but does not disclose processing the plurality of parameters into a plurality of fingerprints/landmark pairs. AAPA discloses processing the plurality of parameters into a plurality of fingerprints/landmark pairs [paragraph 65]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yankowski to include processing the plurality of parameters into a plurality of fingerprints/landmark pairs as taught by AAPA for the purpose of improving storage access and maintenance of data [col 1, lines 5-10].

Claims 29, 30, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yankowski in view of US Pat No 6,819,721 issued to Kobayashi et al (hereafter Kobayashi et al (hereafter Kobayashi)

Claims 29, 30, 44 and 45 :

Yankowski discloses the elements of claims 19 and 27/42 as noted above but does not disclose wherein said compiling a list of distinctive and reproducible points in time at which fingerprints should be calculated comprises calculating the instantaneous power at said points in time and selecting a power maxima within those points in time. Kobayashi discloses an instantaneous power maximum value detector for detecting the maximum value of the instantaneous power for a certain period [col 4, lines 37-41]. It would have been obvious to one

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of ordinary skill in the art at the time the invention was made to modify Yankowski to include wherein said compiling a list of distinctive and reproducible points in time at which fingerprints should be calculated comprises calculating the instantaneous power at said points in time and selecting a power maxima within those points in time based on the teachings of Kobayashi for the purpose of controlling power to optimize power transmission [col 2, lines 35-38].

### ***Response to Arguments***

Applicant's arguments filed 8/25/2006 have been considered but are not persuasive for the following reasons.

#### **Applicant Argues:**

Applicant states in the fifth paragraph of page 8 "Applicant respectfully points out that a CD is not a media sample, as required by claims 19 and 35. Rather a CD is a digital medium form which media samples may be read.

#### **Examiner Responds:**

Examiner is not persuaded. The abstract of instant application states:

The user places a media sample in his media player, e.g., a CD or DVD player in his computer.

Clearly the specification discloses that a media sample may be a CD or DVD.

#### **Applicant Argues:**

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Applicant states “Yankowski does not extract a plurality of characteristics from a media sample.”

**Examiner Responds:**

Examiner is not persuaded. Applicant fails to provide an explicit definition for the claimed “plurality of characteristics.” In fact the **only** (emphasis added) reference in the specification is the following:

It is worthy to note that any reference herein to “one embodiment” or “an embodiment” means a particular feature, structure, or characteristic described in connection with the embodiment is included in at least one embodiment of the invention.

Since the specification does not provide an explicit definition, “characteristic” will be given its plain ordinary meaning. Characteristic is defined as a distinguishing trait, feature or quality, peculiarity.<sup>1</sup> Examiner maintains at least one of the following features disclosed by Yankowski reads on “characteristic.”

column 2, lines 45-65 reads on the claimed “characteristic,” i.e., title, track, names, artist,

column 3, line 8: conversion of signals representing music

column 4, line 43: table of tracks

**Applicant Argues:**

Applicant states in the second paragraph of page 9 that Yankowski does not teach “extracting one or more characteristics from the music sample.”

**Examiner Responds:**



Examiner is not persuaded. Yankowski discloses above limitation in column 3, line 8 which discloses converting signals which represent music.

**Applicant Argues:**

Applicant states in the third paragraph of page 9 “However, this is not the same as fingerprints as set forth in applicant’s claimed invention.”

**Examiner Responds:**

Examiner is not persuaded. Yankowski discloses in column 5, lines 45-65 that the elapsed time of each movement (track) and an absolute time for the point content are processed to form a TOC entry for a typical music compact disc. In this regard, a Sony originated “Custom File” feature is disclosed to uniquely identify a CD. Furthermore, a larger sampling of data is disclosed to uniquely identify a “fingerprint” for each compact disc. Examiner correctly concludes that above disclosure by Yankowski reads on the claim limitation “deriving fingerprint/landmark pairs from said characteristics.

**Applicant Argues:**

Applicant states in the fourth paragraph of page 10 “Without conceding that the first or second criteria are satisfied, the applicant respectfully asserts that the examiner’s rejection fails to satisfy the third criteria.”

**Examiner Responds:**

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<sup>1</sup> Webster’s New World College Dictionary, Fourth Edition

Examiner is not persuaded. MPEP § 2666 requires Applicant to distinctly and specifically point out each supposed error in the examiner's action. Applicant's "assertion" is merely Applicant's conclusion or opinion which is not supported by factual evidence.

Furthermore, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached Monday through Friday between 8:00 am and 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Etienne LeRoux

10/13/2006



Primary Examiner